

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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JESUITA AGUIRRE,

Plaintiff,

v.

No. Civ. 18-00153 WJ/GBW

ATRIUM MEDICAL CORPORATION,  
GETINGE GROUP, GETINGS USA, INC.,  
MAQUET CARDIOVASCULAR, LLC.

Defendants.

**MEMORANDUM OPINION AND ORDER  
DENYING DEFENDANT'S MOTION TO DISMISS AS MOOT**

THIS MATTER comes before the Court sua sponte upon a Motion to Dismiss for Failure to State a Claim filed by Defendant Atrium on August 3, 2018 (**Doc. 15**).

On September 4, 2018, Plaintiff filed a motion to amend her complaint as of right, which the Court granted. *See* Docs 20 & 23. Because the amended complaint supercedes the original complaint, Defendant's motion to dismiss is now moot, as Plaintiff notes in her response to the motion to dismiss. *See* Doc. 21 at 2.<sup>1</sup> *See, e.g., Strich v. United States*, No. 09-cv-01913- REBKLM, 2010 WL 14826, at \*1 (D. Colo.) Jan. 11, 2010) (citations omitted) (“The filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded.”); *AJB Props., Ltd. v. Zarda Bar-B-Q of Lenexa, LLC*, No. 09-2021-JWL, 2009 WL 1140185, at \*1 (D. Kan. April 28, 2009) (finding that amended complaint superseded original

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<sup>1</sup> Plaintiff filed the response to the motion to dismiss the same day as she filed her motion to amend the complaint, more than the two weeks allowed by this Court’s local rules. *See* D.N.M.LR-Civ. 7.4. The Court assumes that the parties agreed to an extension of time for Plaintiff to respond.

complaint and accordingly, defendant's motion to dismiss the original complaint is denied as moot"); *Gotfredson v. Larsen LP*, 432 F. Supp. 2d 1163, 1172 (D. Colo. 2006) (noting that defendants' motions to dismiss are "technically moot because they are directed at a pleading that is no longer operative").

Defendant has not replied to this argument, and so the Court will assume that Defendant takes no position on whether its motion to dismiss has become moot upon Plaintiff's amendment of the complaint. The Court therefore DENIES Defendant's Motion to Dismiss (**Doc. 15**) as MOOT.

**IT IS SO ORDERED.**



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CHIEF UNITED STATES DISTRICT JUDGE